

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Kathleen Curry and Toni Larson  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** September 18, 2017  
**SUBJECT:** Proposed initiative measure 2017-2018 #49, concerning Statutory State Legislative Redistricting

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

## Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To stop political gerrymandering;
2. To change the qualifications for members of the Colorado Reapportionment Commission (the "Commission") by:

- a. Except for the legislative members, prohibiting current members of the general assembly or candidates for the general assembly from serving on the Commission;
  - b. Requiring an equal number of commission members from the state's two largest political parties; and
  - c. Requiring that at least three members of the Commission be either unaffiliated with any political party or affiliated with a political party other than one of the two largest parties (independent commissioners);
3. To establish a process for recommending independent members of the Commission to the governor and chief justice;
4. To authorize the Commission to adopt rules;
5. To specify that the Commission is subject to the "Colorado Open Records Act"; except that maps not submitted to the Commission are not public records, but that work product and communications between staff are public records once a plan is submitted to the supreme court;
6. To provide that the Commission is subject to the open meetings provisions of part 4 of article 6 of title 24, C.R.S.;
7. To prohibit:
  - a. Communications concerning Commission business outside of a public meeting involving three or more commissioners;
  - b. Communications between commissioners and the Commission staff concerning plans unless during a public meeting; and
  - c. Communications by Commission staff concerning any plan outside of a public meeting except with other staff members;
8. To require:
  - a. Any person who receives compensation for advocating to the Commission or its members to be deemed a professional lobbyist and subject to laws relating to professional lobbyists; and
  - b. At least eight affirmative votes from Commissioners for the adoption of any motion of the Commission;
9. To require staff to present at least four plans prior to the Commission's consideration of a preliminary plan;

10. To require the Commission to adopt a preliminary plan by a date specified in the constitution, or staff's fourth plan is deemed the preliminary plan;
11. To conduct public hearings throughout the state, but authorizing remote hearings technology to be utilized for certain hearings;
12. To require the Commission to finalize and submit its plans to the Colorado Supreme Court by the date specified in the constitution, or the preliminary plan is submitted to the court as the final plan; and
13. To provide that the supreme court reviews the final plans for compliance with constitutional requirements and may return a plan to the Commission for changes.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. The previous part 1 of article 2 of title 2, C.R.S., which was repealed in 2017, described the state senatorial districts as established by the general assembly. It is the practice of the Office of Legislative Legal Services in drafting bills for the general assembly not to enact new law by recreating and reenacting previously repealed material unless the subject matter of the new material is similar to the subject matter of the former material. This is for historic purposes so citizens can track repealed sections of law. Do the proponents believe that for historical purposes, it would be better to place the new proposed part 1 in a different location in article 2?
4. The proposed section 2-2-103 would establish qualifications and criteria for members of the Commission in addition to those established in Article V, Section 48. In light of *Reale v. Bd of Real Estate Appraisers*, 880 P.2d 1205 (Colo. 1994), do the proponents believe that such additional qualifications and criteria may be established in statute?
5. Is it the intent of the proponents that a member of the Commission can never have been a candidate for the general assembly? Is it the intent of the

- proponents that if a person serves on the Commission, the person is barred from being a candidate for the general assembly in the future?
6. Could two or more of the independent members of the Commission be from the same minor political party? If so, would that impact the independent balance of the Commission?
  7. The panel is to recommend applicants that it finds to be most qualified. What skills, knowledge, or experience do the proponents believe makes a person more or less qualified?
  8. Under the last sentence in proposed section 2-2-103 (7), if the chief justice determines that none of the remaining applicants meet the requirements, can he or she appoint someone not on the list of applicants from the panel? If so, must the person have been an applicant considered by the panel?
  9. For purposes of determining the two largest political parties, should the secretary of state count both active and inactive registered electors?
  10. If this measure and proposed initiative 2017-2018 #50 both pass, could the same staff be assigned to both commissions?
  11. The "State Administrative Procedures Act", article 4 of title 24, C.R.S., establishes procedures that a commission must follow when adopting rules. Is it the proponents' intent that the Commission comply with that Act when adopting its rules?
  12. The measure provides that "Work product and communications between commission staff are subject to disclosure once a plan is submitted to the Supreme Court." Do the proponents intend that all work product and communications of the staff are subject to disclosure once the plan is submitted or only work product and communications related to the final plan?
  13. Under the measure, would a professional journalist writing an editorial urging the Commission to adopt a certain plan or provision be considered a professional lobbyist?
  14. Previous Commissions have divided the state into regions and held public hearings on each region before looking at preliminary plans for each region. Do the proponents anticipate that there will be similar hearings before the staff prepares its initial preliminary plan?
  15. Is it the proponents' intent that staff will prepare an initial preliminary plan that will be submitted to the Commission, be subject of a hearing at which

- commissioners may suggest changes to that initial plan, and that based on suggested changes staff will then prepare a second plan that is again subject to submission to the Commission and another hearing, so that ultimately the Commission will have considered not less than four staff-submitted plans before the Commission votes on a preliminary plan?
16. If the Commission votes to amend a staff plan, is staff required to include that amendment in its next plan?
  17. If the Commission considers an amendment to a staff plan but does not affirmatively vote to adopt the amendment, may staff include the amendment in its next plan?
  18. When a member or group of members requests staff to prepare a new plan or an amendment to a plan at a public meeting, do the proponents anticipate that such a plan or amendment maybe in an electronic format or just a description of the plan or changes requested?
  19. If the Commission convenes on May 14, 2021, the last day to approve a preliminary plan would be September 3, 2021. If a preliminary plan is not approved by the Commission by that date, and public hearings are held for the following forty-five days, the Commission would only have nine days after the public hearings to consider, approve, and have the final plan submitted to the supreme court. Do the proponents believe that this is sufficient time for the Commission to accomplish this?
  20. In order to avoid sliver precincts—that is, precincts that must be created because lines for congressional and state legislative districts are close but do not match—staff for previous commissions have altered Commission plans based on the final congressional redistricting plan. If both this initiative and Initiative 2017-2018 #50 are adopted, may staff for both Commissions communicate with one another about plans to avoid sliver precincts?
  21. Do the proponents believe that fifty-five days is sufficient time for county clerks to redraw precinct boundaries, potential candidates to know what district in which they reside, and voters become familiar with the candidates prior the precinct caucuses?
  22. Under section 1-40-105.5, C.R.S., the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted

to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.

- a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
- b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
- c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at [BallotImpactEstimates.ga@state.co.us](mailto:BallotImpactEstimates.ga@state.co.us).

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Because the proponents are repealing and reenacting the entirety of part 1 of article 2 of title 2, the proponents have the opportunity to rename the part to describe its contents. If the proponents do not wish to rename the part in the proposed initiative, OLLS will select a title for the part. If the proponents would like to add a part title, insert language after the section 1 amending clause in the following format:

PART 1

PART TITLE HERE IN ALL CAPS

2. Active voice should be used in drafting whenever possible, to accurately identify the actor responsible for an outcome.
3. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty." The proponents may consider whether the following uses of the word "shall" specify the person

to whom a duty is assigned: 2-2-102; 2-2-103 (1), (3), (4)(c) [twice], (4)(d) [twice], (4)(e), (6) [twice], and (8); 2-2-104 (7)(d); and 2-2-105 (2) [twice].

4. OLLS has recently updated how it drafts internal references in statute:
  - a. Part, article, and title numbers should be added when making internal references (e.g., "section 46 (2) of this article V" rather than "section 46 (2) of this article" or "as used in this title 2" rather than "as used in this title").
  - b. Subsections of statute are now referred to directly (e.g., "subsection (6)(b) of this section" rather than "paragraph (b) of subsection (6) of this section").
  - c. When referring to a section, part, article, or title within the Colorado Revised Statutes, it is not necessary to include "C.R.S." at the end of the cite.
5. In the text of the proposed initiative, the terms "secretary of state" and "secretary" are used interchangeably. The proponents might consider making this term uniform throughout in order to prevent any confusion.
6. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate.
  - a. The following should be large-capitalized:
    - i. The first letter of the first word of each sentence; [2-2-103 (7)]
    - ii. The first letter of the first word of each entry of an enumeration paragraphed after a colon; [2-2-104 (6)(b)] and
    - iii. The first letter of proper names.
  - b. You do not need to large capitalize the following:
    - i. "Supreme Court".
    - ii. "County" in "El Paso county".
    - iii. "Continental Divide".
    - iv. "Governor".
    - v. "Chief Justice".

7. Numbers should be written out, rather than using digits. [2-2-104 (10) and 2-2-105 (1)(a)]